UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 84-2167

Ona Mae Reed, et al,

Appellees,

versus

Health and Human Services,

Appellant,

and

William L. Lukhard, etc.,

Defendant.

No. 84-2168

Ona Mae Reed, et al,

Appellees,

versus

Health and Human Services,

Defendant,

and

William L. Lukhard, etc.,

Appellant.

No. 84-2187

Ona Mae Reed, et al,

Appellants,

versus

Department of Health and
Human Services, et al,

Appellees.

Appeals from the United States District Court for the Western District of Virginia, at Roanoke. James C. Turk, District Judge

---

The appellant/cross appellee's, Lukhard, petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of the Court requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

Entered at the direction of Judge Phillips, with the concurrence of Judge Widener and Judge Ward, United States District Judge, sitting by designation.

For the Court,

(Signed) John M. Greacen
CLERK

Filed November 14, 1985. U.S. Court of Appeals
Fourth Circuit

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 84-2167(L)

Ona Mae Reed, Sallie Long, Ruth Wilcher, Opal Mae Cook, Stella King, and all others similarly situated,

Appellees,

versus

Health and Human Services,

Appellant,

and

William L. Lukhard, Commissioner of the Va. Dept. of Welfare,

Defendant.

No. 84-2168

Ona Mae Reed, Sallie Long, Ruth Wilcher, Opal Mae Cook, Stella King, and all others similarly situated,

Appellees,

versus

Health and Human Services,

Defendant,

and

William L. Lukhard, Commissioner of the Va. Dept. of Welfare,

Appellant.

No. 84-2187

Ona Mae Reed, Sallie Long, Ruth Wilcher, Opal Mae Cook, Stella King, and all others similarly situated,

Appellants,

versus

Department of Health and Human Services; William L. Lukhard, Commissioner of the Va. Dept. of Welfare,

Appellees.

Appeals from the United States District Court for the Western District of Virginia at Roanoke. James C. Turk, U.S. District Judge.

Upon consideration of the appellant/cross appellees', William L. Lukhard, motion to stay the mandate pending application to the United States Supreme Court for a writ of certiorari,

IT IS ORDERED that the motion is granted.

Entered at the direction of Judge Phillips with the concurrence of Judge Widener, and Judge Ward, United States

District Judge, sitting by designation.

For the Court,

(Signed) John M. Greacen
CLERK

Filed November 21, 1985, U.S. Court of Appeals
Fourth Circuit

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 84-2167(L)

Ona Mae Reed,
Sallie Long,
Ruth Wilcher,
Opal Mae Cook,
Stella King, and
all others similarly
situated,

Appellees,

versus

Health and Human Services,

Appellant,

and

William L. Lukhard, Commissioner
of the Va. Dept. of Welfare,

Defendant.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. James C. Turk, District Judge.

Upon consideration of the appellees' motion to vacate or modify the stay of mandate,

IT IS ORDERED that the motion is denied.

Entered at the direction of Judge Phillips with the concurrence of Judge Widener and Judge Ward, United States District Judge, sitting by designation.

For the Court,

(Signed) John M. Greacen
Clerk

Filed December 13, 1985, U.S. Court of Appeals
Fourth Circuit

APPENDIX D

* * * *

(17) provide that if a person specified in paragraph (8)(A)(i) or (ii) receives in any month an amount of income which, together with all other income for that month not excluded under paragraph (8), exceeds the State's standard of need applicable to the family of which he is a member—

(A) such amount of income shall be considered income to such individual in the month received, and the family of which such person is a member shall be ineligible for aid under the plan for the whole number of months that equals (i) the sum of such amount and all other income received in such month, not excluded under paragraph (8), divided by (ii) the standard of need applicable to such family, and

(B) any income remaining (which amount is less than the applicable monthly standard) shall be treated as income received in the first month following the period of ineligibility specified in subparagraph (A);

* * * *

* * * *

(17) provide that if a child or relative applying for or receiving aid to families with dependent children, or any other person whose need the State considers when determining the income of a family, receives in any month an amount of earned or unearned income which, together will all other income for that month not excluded under paragraph (8), exceeds the State's standard of need applicable to the family of which he is a member--

(A) such amount of income shall be considered income to such individual in the month received, and the family of which such person is a member shall be ineligible for aid under the plan for the whole number of months that equals (i) the sum of such amount and all other income received in such month, not excluded under paragraph (8), divided by (ii) the standard of need applicable to such family, and

(B) any income remaining (which amount is less than the applicable monthly standard) shall be treated as income received in the first month following the period of ineligibility specified in subparagraph (A);

except that the State may at its option recalculate the period of ineligibility otherwise determined under subparagraph (A) (but only with respect to the remaining months in such period) in any one or more of the following cases: (i) an event occurs which, had the family been receiving aid under the State plan for the month of the occurrence, would result in a change in the amount of aid payable for such month under the plan, or (ii) the income received has become unavailable to the members of the family for reasons that were beyond the control of such members, or (iii) the family incurs, becomes responsible for, and pays medical expenses (as allowed by the State) in a month of ineligibility determined under

subparagraph (A) (which expenses may be considered as an offset against the amount of income received in the first month of such ineligibility);

* * * *

§ 233.10(a)(1) General provisions regarding coverage and eligibility.

(a) State plan requirements. A State plan under title I, IV-A, X, XIV, or XVI, of the Social Security Act must:

(1) Specify the groups of individuals, based on reasonable classifications, that will be included in the program, and all the conditions of eligibility that must be met by the individuals in the groups. The groups selected for inclusion in the plan and the eligibility conditions imposed must not exclude individuals or groups on an arbitrary or unreasonable basis, and must not result in inequitable treatment of individuals or groups in the light of the provisions and purposes of the public assistance titles of the Social Security Act. Under this requirement:

(i) A State shall impose each condition of eligibility required by the Social Security Act; and

(ii) A State may:

(A) Provide more limited public assistance coverage than that provided by the Act only where the Social Security Act or its legislative history authorizes more limited coverage;

(B) Impose conditions upon applicants for and recipients of public assistance which, if not satisfied, result in the denial or termination of public assistance, if such conditions assist the State in the efficient administration of its public assistance programs, or further an independent State welfare policy, and are not inconsistent with the provisions and purposes of the Social Security Act.

(iii) There must be clarity as to what groups are included in the plan, and which are within, and which are outside, the scope of Federal financial participation.

(iv) Eligibility conditions must be applied on a consistent and equitable basis throughout the State.

(v) A plan under title XVI must have the same eligibility conditions and other requirements for the aged, blind, and disabled, except as otherwise specifically required or permitted by the Act.

(vi) Eligibility conditions or agency procedures or methods must not preclude the opportunity for an individual to apply and obtain a determination of eligibility or ineligibility.

(vii) Methods of determining eligibility must be consistent with the objective of assisting all eligible persons to qualify.

* * * *

(D) Net income, except as provided in paragraph (a)(3)(xiii) of this section, and resources available for current use shall be considered; income and resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance. When the AFDC assistance unit's income, after applying applicable disregards, exceeds the State need standard for the family because of receipt of nonrecurring lump sum income, the family will be ineligible for aid for the full number of months derived by dividing the sum of the lump sum income and other income by the monthly need standard for a family of that size. Any income remaining from this calculation is income in the first month following the period of ineligibility. The period of ineligibility shall begin with the month of receipt of the nonrecurring income or, at State option, as late as the corresponding payment month. For purposes of applying the lump sum provision, family includes the AFDC assistance unit and any other individual whose lump sum income is counted in determining the period of ineligibility. A State may shorten the period of ineligibility where it finds that a life-threatening circumstance. Further, until that time the non-recurring income must have been used to meet essential needs and currently the assistance unit must have no other income or resources sufficient to meet the life-threatening circumstance.

(F) When the AFDC assistance unit's income, after applying applicable disregards, exceeds the State need standard for the family because of receipt of nonrecurring earned or unearned lump sum income, the family will be ineligible for aid for the full number of months derived by dividing the sum of the lump sum income and other income by the monthly need standard for a family of that size. Any income remaining from this calculation is income in the first month following the period of ineligibility. The period of ineligibility shall begin with the month of receipt of the nonrecurring income or, at State option, as late as the corresponding payment month. For purposes of applying the lump sum provision, family includes all persons whose needs are taken into account in determining eligibility and the amount of the assistance payment. A State may shorten the remaining period of ineligibility when: the standard of need increases and the amount the family would have received also changes; the lump sum income or a portion thereof becomes unavailable to the family for a reason beyond the control of the family; or the family incurs and pays for medical expenses. If the State chooses to shorten the period of ineligibility, the State plan shall:

(1) Identify which of the above situations are included;

(2) In the case of situations involving the increase in the need standard and changes in the amount that have been paid to the family, specify the types of circumstances which will be included;

(3) In the case of situations involving the unavailability of the lump sum income, include a definition of unavailability, and specify what reasons will be considered beyond the control of the family;

(4) In the case of situations involving the payment of medical expenses, specify the types of medical expenses the State will allow to be offset against the lump sum income.

* * * *

C. Lump Sum Payments - The receipt or expected receipt (during the prospective cycle) of a nonrecurring lump sum payment such as the accumulation of benefits for a prior period, earned income tax credit refund, an insurance settlement, loans for current living expenses or from any other unearned source, must be prorated and reflected as income when the lump sum plus all other net countable income exceeds the standard of need (100 percent) in the month of receipt.

Monies received from THE SALE OR CONVERSION OF ANY REAL OR PERSONAL PROPERTY are not considered a lump sum. (See Section 303.3)

In situations where a child receives a lump sum, the option to exclude the child and the income is prohibited. Lump sum payments received by any member of the assistance unit must be used to establish continued eligibility or ineligibility of the unit.

A caretaker-relative other than the parent or an EWB other than the parent is not eligible for inclusion in the assistance unit if he receives a lump

SUM WHICH WHEN ADDED TO OTHER INCOME OF THE ASSISTANCE UNIT WOULD CAUSE INELIGIBILITY BASED ON THE 90 PERCENT STANDARD OF ASSISTANCE. THE CARETAKER-RELATIVE OR EWB OTHER THAN THE PARENT SHALL HAVE A PERIOD OF INELIGIBILITY ESTABLISHED FOR THAT INDIVIDUAL ONLY USING 100 PERCENT OF NEED FOR AN ASSISTANCE UNIT OF ONE.

THE FOLLOWING PROCEDURES ARE APPLICABLE IN THE TREATMENT OF LUMP SUMS:

1. DETERMINING AMOUNT OF LUMP SUM TO BE CONSIDERED - ONLY THE AMOUNT RECEIVED BY AN INDIVIDUAL WHICH IS AVAIL-

ABLE FOR MAINTENANCE SHALL BE CONSIDERED AS INCOME.

IN THE CASE OF EIC REFUNDS, THE AMOUNT USED IN THE RECONCILIATION PROCESS WILL BE DEDUCTED PRIOR TO CONSIDERING THE REFUND AS INCOME.

IN OTHER SITUATIONS, if a client has established that there are directly related expenses associated with the lump sum, which were incurred prior to or within 30 days after receipt of the lump sum, then only that portion of the lump sum less the directly related expenses(s) will be considered as income.

Prior to allowing the directly related expenses(s), documented evidence of the existence of this expense must be obtained. Directly related expenses are items such as funeral expenses, medical bills, legal fees, or liens against insured property. Expenses, incurred pending receipt of a lump sum, for day-to-day living are not considered directly related expenses.

Lump sum payments received as a result of an accumulation of benefits for a prior period, such as Social Security benefits, will have no directly related expense deductions.

Example #1: Ms. S. notifies an agency that she has received a disability settlement, due to an accident, of $2,000; however, she has medical expenses associated with the accident of $500 and attorney fees, related to the settlement, of $500. Prior to allowing the deduction of $1,000 from the lump sum, the agency must have verification that the medical expense and

attorney fees were incurred or verification of the actual payment.

Example #2: Ms. J. notifies the agency that she is the beneficiary for her uncle's life insurance and has received $2,000 as a result of his death. She also provides the agency with verification that she owes the funeral home $1,000 towards determining the period of ineligibility.

If the case continues to be eligible after deducting incurred expenses, the client must provide verification of payment of those expenses promptly in order for the agency to impact the proper payment month.

In those instances where verification of payment is not provided promptly, the lump sum payment will be counted in full. Any payment made on incurred expenses after the lump sum has been reflected in the grant will not be deducted.

The agency must advise the applicant/recipient of the requirements for making actual payments and the consequences for failure to do so.

2. How to count lump sum - add the lump sum or the remainder of the lump sum after expenses to other NET countable income received in the same month to arrive at total income for the budget month. Lump sum income received during the retrospective cycle will always be reflected in the corresponding payment month.

   a. If total income including the lump sum is less than 100% of need for the budget month, reflect all income in the corresponding payment month by either re-

ducing the payment or suspending the grant for one month, whichever is appropriate. If total income falls between 90 percent and 100 percent, the excess will not be counted in the following month.

Example

A.U. of 3 in Group II receives a $250 lump sum in July. The A.U. has other income of $25. Total income for July ($275) is less than the standard of need at 100% ($283); therefore, reflect total income in September by suspending the case. Reinstate for October counting only the $25 income that the A.U. already had.

b. If total income including the lump sum equals or exceeds 100% of need, a period of ineligibility must be established.

1) Divide total budget month income (net countable income plus the lump sum minus appropriate directly related expenses) by the 100% standard of need for the assistance unit to determine the number of months that the assistance unit will be ineligible. Any income remaining after this calculation is counted as income in the first month following the period of ineligibility.

2) Begin the period of ineligibility in the corresponding payment month except when the lump sum was not reported timely. If not reported timely (in time to effect the proper payment month) the period of ineligibility will begin in the month of receipt.

The total amount of a lump sum received by a parent or stepparent in the home who is not in the assistance unit must be considered. If the amount of the lump sum when added to other countable income of the assistance unit would cause the assistance unit to be ineligible the relative who received the lump sum will be considered a member of the assistance unit for purposes of determining the period of ineligibility.

3. The Period of Ineligibility - Once established the period of ineligibility may not be shortened due to changes in the client's situation. All members of the assistance unit, including the parent or stepparent who received a lump sum and as a result was considered a part of the assistance unit, will be ineligible for the duration of the period of ineligibility.

   Exception: The period of ineligibility may be shortened when the lump sum monies have been or will be expended in connection with a life-threatening circumstance. Prior to shortening the period of ineligibility the EW must establish that (1) the life threatening circumstance occurred after receipt of the lump sum, (2) all lump sum monies spent prior to the occurrence of the life threatening circumstances were used to meet maintenance needs as specified in 304.1, and (3) the assistance unit currently has no other income or resources sufficient to meet the life threatening circumstance. The case record must be well documented in this area. A life threatening circumstance is defined as a situation which is the direct result of a natural disaster or fire.

4. Application/reapplications when a lump sum has been received - The eligibility worker must evaluate prior receipt of a lump sum when making an eligibility determination of any application. The following rules are applicable when

evaluating a lump sum prior to a decision of eligibility.

a. Any person whose needs were considered in establishing a period of ineligibility will not be eligible for assistance until the period of ineligibility has ended. (305.4.C.2. & 3.) Persons not considered in establishing the period of ineligibility may be eligible provided all other eligibility factors are met.

b. In situations where the recipient did not provide verification of payment or directly related expenses and the full amount of the lump sum was used to establish a period of ineligibility, subsequent provision of verification of payment will not change the established period of ineligibility.

c. A lump sum received prior to the month of application shall be evaluated in accordance with the resource policy.

d. A LUMP SUM RECEIVED DURING THE MONTH OF APPLICATION OR AT ANY TIME DURING PENDING STATUS OF THE APPLICATION SHALL BE TREATED AS INCOME IN THE MONTH RECEIVED AND, IF APPROPRIATE, A PERIOD OF INELIGIBILITY SHALL BE ESTABLISHED USING THE PROCEDURE IN 2.b.1. ABOVE. IN THIS SITUATION THE PERIOD OF INELIGIBILITY SHALL BEGIN WITH THE MONTH OF RECEIPT OF THE LUMP SUM.

e. Cases which are closed for failure to secure verification of lump sum payments must provide verification and have a period of ineligibility established (if

necessary) prior to any future receipt of assistance. The period of ineligibility, even though established at a later time, shall begin with the month of receipt of the lump sum.

B. Income From Social Security and Other Benefits - The total monthly amount actually received by members of the assistance unit from such benefits is the amount to be counted as income on a monthly basis, with the following exceptions:

1. When a member of the assistance unit is eligible for benefits, (such as but not limited to, RR Retirement, private corporation retirement, Veterans, Social Security, or any reduced benefits), the verified amount must be counted, even though the individual chooses not to accept such benefits.

If the individual refuses to apply for benefits and the amount to which he is entitled cannot be verified, it is not possible to determine that the individual is in need and he cannot be included in the assistance unit.

2. When educational benefits are being received from Veterans Administration. (See 305.4A. 14.)

3. When the Medicare (Part B) premium is deducted monthly from the Social Security or railroad retirement benefit, the amount of benefits actually received, plus the amount of the Part B premium is to be counted as income.

C. Lump Sum Payments - The receipt or expected receipt (during the prospective cycle) of a nonrecurring lump sum payment such as the accumulation of benefits for a prior period, earned income tax credit refund, an insurance settlement, loans for current living expenses, REFUNDS OF OVERCOLLECTED CHILD SUPPORT IDENTIFIED AS SUPPORT PAYMENTS PAID IN EXCESS OF PUBLIC ASSISTANCE or INCOME from any other unearned source, must be prorated and reflected as income when the lump sum plus all other net count-

able income exceeds the standard of need (100%) in the month of receipt.

Monies received from the sale or conversion of any real or personal property are not considered a lump sum. (See Section 303.3)

In situations where a child receives a lump sum, the option to exclude the child and the income is prohibited. When the worker learns that a child in an assistance unit expects to receive a lump sum, the worker shall advise the caretaker/relative of the right to exclude the child from the assistance unit. Lump sum payments received by any member of the assistance unit must be used to establish continued eligibility or ineligibility of the unit.

A caretaker-relative or EWB, other than the parent or stepparent, is not eligibile for inclusion in the assistance unit if he receives a lump sum which when added to other income of the assistance unit would cause ineligibility based on the 90 percent standard of assistance. The caretaker-relative or EWB, other than the parent or stepparent, shall have a period of ineligibility established for that individual by using the lump sum plus that individual's net countable income divided by 100% of need for an assistance unit of one.

The following procedures are applicable in the treatment of lump sums:

1. Determining amount of lump sum to be considered - only the amount received by an individual which is available for maintenance (lump sum, less directly related expenses paid) shall be considered as income.

   In the case of EIC refunds, the amount used in the reconciliation process will be deducted prior to considering the refund as income. See 305.3 F.3 FOR TREATMENT OF EIC REFUNDS.

In other situations, if a client has established that there are directly related expenses associated with the lump sum, which were incurred prior to or within 30 days after receipt of the lump sum, then only that portion of the lump sum less the directly related expenses(s) will be considered as income.

Prior to allowing the directly related expenses(s), documented evidence of the existence of this expense must be obtained. Directly related expenses are items such as funeral expenses, medical bills, legal fees, or liens against insured property. Expenses, incurred pending receipt of a lump sum, for day-to-day living are not considered directly related expenses.

Lump sum payments received as a result of an accumulation of benefits for a prior period, such as Social Security benefits, will have no directly related expense deductions.

Example #1: Ms. S. notifies an agency that she has received a disability settlement, due to an accident, of $2,000; however, she has medical expenses associated with the accident of $500 and attorney fees, related to the settlement, of $500. Prior to allowing the deduction of $1,000 from the lump sum, the agency must have verification that the medical expense and attorney fees were incurred or verification of the actual payment.

Example #2: Ms. J. notifies the agency that she is the beneficiary for her uncle's life insurance and has received $2,000 as a result of

his death. She also provides the agency with verification that she owes the funeral home $1,000. The agency will only consider $1,000 towards determining the period of ineligibility.

If the case continues to be eligible after deducting incurred expenses, the client must provide verification of payment of those expenses promptly in order for the agency to impact the proper payment month.

In those instances where verification of payment is not provided promptly, the lump sum payment will be counted in full. Any payment made on incurred expenses after the lump sum has been reflected in the grant will not be deducted.

The agency must advise the applicant/recipient of the requirements for making actual payments and the consequences for failure to do so.

2. How to count lump sum - add the lump sum or the remainder of the lump sum after expenses to other net countable income received in the same month to arrive at total income for the budget month. Lump sum income received during the retrospective cycle will be reflected in the corresponding payment month except when the case is being closed for other reasons. When a lump sum is received in the month of case closure, the period of ineligibility will begin the month following the month of receipt of the lump sum. The recipient must be advised of the duration of the period of ineligibility.

a. If total income including the lump sum is less than 100% of need for the budget month, reflect all income in the corresponding payment month by either reducing the payment or suspending the grant for one month, whichever is appropriate. If total income falls between 90 percent and 100 percent, the excess will not be counted in the following month.

Example

A. U. of 3 in Group II receives a $275 lump sum in July. The A.U. has other income of $25. Total income for July ($300) is less than the standard of need at 100% ($322); therefore, reflect total income in September by suspending the case. Reinstate for October counting only the $25 income that the A.U. already had.

b. If total income including the lump sum equals or exceeds 100% of need, a period of ineligibility must be established.

(1) Divide total budget month income (net countable income plus the lump sum minus appropriate directly related expenses) by the 100% standard of need for the assistance unit to determine the number of months that the assistance unit will be ineligible. Any income remaining after this calculation is counted as income in the first month following the period of ineligibility.

(2) Begin the period of ineligibility in the corresponding payment month except when the lump sum was not reported timely. If not reported

timely (in time to effect the proper payment month) the period of ineligibility will begin in the month of receipt.

The total amount of a lump sum, less directly related expenses paid, received by a parent in the home who is not in the assistance unit must be counted. If the amount of the lump sum when added to other countable income of the assistance unit would cause the assistance unit to be ineligible, the parent who received the lump sum will be considered a member of the assistance unit for purposes of determining the period of ineligibility ONLY.

A lump sum received by a stepparent not included in the assistance unit will be considered income available to the assistance unit in the month of receipt only (see 305.4.F.). Subsequent to the payment month in which the income is reflected, the remainder of the lump sum will be a resource to the stepparent and is not to be considered in determining eligibility for the assistance unit.*

A lump sum received by a stepparent included in the assistance unit will be considered in accordance with 305.4C.

3. The Period of Ineligibility - Once established, the period of ineligibility may not be shortened due to changes in the client's situation EXCEPT IN SITUATIONS CITED BELOW.** All members of the assistance unit, including the parent who received a lump sum and as a result was considered a part of the assistance unit, will be ineligible for the duration of the period of ineligibility.

---

*45 CFR 233.20(a)(3)(xiv)

**45 CFR 233.20(a)(3)(ii)(F)

Exception: WHEN ANY ONE OR MORE OF THE FOLLOWING SITUATIONS HAS OCCURRED, THE PERIOD OF INELIGIBILITY MUST BE RECALCULATED. IF THE RECALCULATED INELIGIBILITY PERIOD IS SHORTER THAN THE ONE PREVIOUSLY ESTABLISHED, THE PERIOD OF INELIGIBILITY MUST BE ADJUSTED.

a. THE STANDARD OF NEED HAS BEEN INCREASED SINCE THE PERIOD OF INELIGIBILITY WAS ESTABLISHED (MOVING FROM ONE LOCALITY GROUPING TO ANOTHER DOES NOT MEET THIS CONDITION),

b. THE ASSISTANCE UNIT INCURS MEDICAL EXPENSES SUBSEQUENT TO RECEIPT OF THE LUMP SUM, AND THE LUMP SUM MONIES ARE USED TO PAY THESE EXPENSES,

c. THE LUMP SUM, OR A PORTION THEREOF, BECOMES UNAVAILABLE DUE TO ONE OF THE FOLLOWING CIRCUMSTANCES:

1) A MEMBER OF THE ASSISTANCE UNIT, OR A RELATIVE OF SPECIFIED DEGREE LIVING WITH THE ASSISTANCE UNIT, ABSCONDS WITH THE LUMP SUM MONIES,

2) THE LUMP SUM MONIES ARE STOLEN AND THE THEFT IS REPORTED TO POLICE,

3) PAYMENT OF DEBTS WHICH ARE INCURRED FOR A MEMBER OF THE ASSISTANCE UNIT. DEBTS ARE DEFINED AS MEDICAL BILLS INCURRED FROM THE PERIOD

PRIOR TO RECEIPT OF THE LUMP SUM, EXPENSES RELATED TO A NATURAL DISASTER OR FIRE, COSTS RELATED TO AVOIDING THE ASSISTANCE UNIT'S EVICTION AND/OR A UTILITY CUT-OFF, WEATHER RELATED REPAIRS OR REPLACEMENT TO THE HOME IN WHICH THE ASSISTANCE UNIT LIVES, AND FUNERAL EXPENSES,

4) OR ANY OTHER CONDITION WHICH, IN THE BEST JUDGMENT OF THE LOCAL AGENCY, IS DEEMED TO HAVE OCCURRED BEYOND THE CONTROL OF THE PARENT(S) AND/OR ASSISTANCE UNIT. FINAL AUTHORITY FOR SUCH DECISIONS WILL REST WITH EACH LOCALITY.

MEDICAL SERVICES WHICH WILL BE ALLOWED UNDER ITEMS b. AND c.3 WILL BE THE FOLLOWING: INPATIENT HOSPITAL SERVICES; OUTPATIENT HOSPITAL SERVICES; LABORATORY AND X-RAY SERVICES; NURSING HOME CARE; HOME HEALTH SERVICES; CLINIC SERVICES; PHARMACEUTICAL SERVICES; OPTOMETRY SERVICES; MEDICAL SUPPLIES AND EQUIPMENT; FAMILY PLANNING SERVICE; ACUPUNCTURE; TRANSPORTATION NECESSARY FOR MEDICAL CARE; SCREENING SERVICES; PHYSICAL, OCCUPATIONAL, AND SPEECH THERAPY; AND PHYSICIAN'S SERVICES, INCLUDING SERVICES PROVIDED BY ANY PERSON LICENSED TO PRACTICE MEDICINE, OSTEOPATHY, CLINICAL PSYCHOLOGY, CHIROPRACTIC, PODIATRY, OR MIDWIFERY.

THE CASE RECORD MUST BE FULLY DOCUMENTED. ACCEPTABLE SUBSTANTIATION INCLUDES POLICE RECORDS OR POLICE STATEMENTS INDICATING THE AMOUNT STOLEN IN THEFT SITUATIONS, RECEIPTS SHOWING THE TYPE OF DEBTS AND THE AMOUNT PAID, RECEIPTS SHOWING MEDICAL SERVICES PROVIDED AND THE AMOUNT PAID, AND FOR AGENCY JUDGMENT SITUATIONS, WHATEVER SUBSTANTIATION THE AGENCY DEEMS APPROPRIATE.

WHEN A FAMILY MEMBER ABSCONDS WITH THE LUMP SUM MONIES, A NOTARIZED STATEMENT FROM THE APPLICANT/RECIPIENT IS SUFFICIENT. THE NOTARIZED STATEMENT MUST SPECIFY THE AMOUNT TAKEN.

THE PERIOD OF INELIGIBILITY CAN ONLY BE SHORTENED UPON A REAPPLICATION DURING THE INELGIBILITY PERIOD, UNLESS THE CLIENT MEETS THE PROVISIONS FOR SHORTENING THE PERIOD PRIOR TO CASE CLOSURE, IN WHICH CASE A RECALCULATION, IF APPROPRIATE, WILL BE MADE. ANY CHANGES, SUBSEQUENT TO THE ESTABLISHMENT OF THE PERIOD OF INELIGIBILITY, CATEGORICAL OR FINANCIAL, WILL NOT BE CONSIDERED IN THE RECALCULATION.

THE FOLLOWING ARE EXAMPLES OF HOW TO SHORTEN/RECALCULATE THE PERIOD OF INELIGIBILITY:

EXAMPLE I - INCREASE IN STANDARDS

MISS A. RECEIVES A $3,000 LUMP SUM IN FEBRUARY.

INITIAL PERIOD OF INELIGIBILITY CALCULATION
$3,000 ÷ $298 (100% NEED STANDARD, GROUP II, A.U. OF 3, AT THE TIME THE CASE WAS CLOSED) = 10 MONTHS WITH $20 TO COUNT IN 11TH MONTH.
PERIOD OF INELIGIBILITY - APRIL - JANUARY WITH $20 TO COUNT IN FEBRUARY

STANDARDS INCREASE IN JULY

ADJUSTED PERIOD OF INELIGIBILITY
$3,000 ÷ $322 (NEW 100% NEED STANDARD) = 9 MONTHS WITH $102 TO COUNT IN 10TH MONTH.
PERIOD OF INELIGIBILITY - APRIL - DECEMBER WITH $102 TO COUNT IN JANUARY.

EXAMPLE II - SHORTENING THE PERIOD OF INELIGIBILITY FOR SITUATIONS OTHER THAN AN INCREASE IN STANDARDS.

MRS. B. RECEIVES A LUMP SUM OF $950 IN MARCH.

INITIAL PERIOD OF INELIGIBILITY CALCULATION
$950 ÷ $257 (A.U. OF 2, 100% OF NEED, GROUP II) = 3 MONTHS WITH $179 TO COUNT IN FOURTH MONTH
PERIOD OF INELIGIBILITY - MAY - JULY WITH $179 TO COUNT IN AUGUST

RECALCULATION OF PERIOD OF INELIGIBILITY
$950 - $600 (MEDICAL BILLS PAID) = $350 REDUCED LUMP SUM
$350 ÷ $257 = 1 MONTH OF INELIGIBILITY

WITH $93 TO COUNT IN SECOND MONTH

ADJUSTED PERIOD OF INELIGIBILITY

MAY AND $93 TO COUNT IN JUNE

4. Applications/reapplications when a lump sum has been received - the eligibility worker must evaluate prior receipt of a lump sum when making an eligibility determination of any application. The following rules are applicable when evaluating a lump sum prior to a decision of eligibility.

   a. Any person whose needs were considered in establishing a period of ineligibility will not be eligible for assistance until the period of ineligibility has ended. (305.4.C.2. & 3.) Persons not considered in establishing the period of ineligibility may be eligible provided all other eligibility factors are met.

   b. In situations where the recipient did not provide verification of payment or directly related expenses and the full amount of the lump sum was used to establish a period of ineligibility, subsequent provision of verification of payment will not change the established period of ineligibility.

   c. A lump sum received prior to the month of application shall be evaluated in accordance with the resource policy.

   d. A lump sum received during the month of application or at any time during pending status of the application shall be treated as income in the month received and, if appropriate, a period of ineligibility shall

be established using the procedure in 2.b.1. above. In this situation the period of ineligibility shall begin with the month of receipt of the lump sum.

e. Cases which are closed for failure to secure verification of lump sum payments must provide verification of the payments prior to any future receipt of assistance. The period of ineligibility, even though established at a later time, shall begin with the month of receipt of the lump sum.

f. Cases which are closed for reasons other than a lump sum, and the lump sum was reported prior to the effective date of case closure, the period of ineligibility will begin in the month following the month in which the lump sum was received. (Refer to 305.4.C.2.) If, however, the lump sum was not reported prior to the effective date of case closure, the period of ineligibility shall be established prior to any future receipt of assistance. The period of ineligibility, in this instance, shall begin with the month of receipt of the lump sum.

THE SECRETARY OF HEALTH AND HUMAN SERVICES
Washington, D.C. 20201

May 5, 1981

The Honorable Thomas P. O'Neill
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Enclosed for the consideration of the Congress is a draft bill "to amend the Social Security Act to increase the effectiveness and improve the administration of certain programs under the Act, and for other purposes." When enacted, the bill may be cited as the "Social Welfare Amendments of 1981." A section-by-section summary of the bill is also enclosed for your convenience.

The bill would make important improvements to the programs of Aid to Families with Dependent Children (AFDC), Child Support Enforcement (CSE), and Supplemental Security Income (SSI), all of which are established under the Social Security Act. In AFDC, these amendments would conserve Federal resources by assuring that State programs concentrate their efforts on families most in need, encourage work, structure State programs as a temporary safety-net rather than a way of life for the indefinite future, emphasize individual responsibility, and improve program administration in order to increase the accuracy of payments and deter fraud and avoid waste and abuse. To achieve this, the bill contains amendments revising the earned income disregards, setting an overall ceiling on the income of an eligible family, authorizing new community work experience programs for individuals who cannot find regular employment, and requiring a monthly retrospective accounting system and monthly reports from

AFDC recipients. These are only a few of the most crucial improvements; the bill's provisions are all described in detail in the enclosed summary.

In the child support program, also, there is room for significant improvement. Our proposed amendments to the CSE program will facilitate an offset mechanism for collecting delinquent support payments from Federal income tax refunds, broaden authority for the State agency to collect existing support obligations for the child's parent as well as for the child, and improve the system of assessing fees for services on behalf of non-AFDC families and allocating costs between the Federal and State levels of government.

Finally, in the SSI the bill would repeal the mandatory pass through of cost-of-living increases prospectively; this repeal would leave to States the decision of whether to use State resources, for which there are competing demands, to pass through their State supplements some or all of the Federal cost-of-living increases. We would use a monthly retrospective accounting system to determine benefits that parallels the one proposed for AFDC. (In the SSI program, the accounting is on a quarterly prospective basis, which exacerbates the weaknesses of a prospective determination.) Also, the bill would remove the authority to fund State rehabilitation services for SSI recipients from this program; all Federal payments for State rehabilitation services, would, in the future, be provided through a block grant for social services, proposed by this Department separately.

This draft bill implements significant portions of the President's budget for fiscal year 1982, as well as strengthening the ability of the State and Federal governments to achieve the fundamental purposes of these programs. In fiscal year 1982, the changes included in this bill would save over $1 billion in Federal expenditures, with greater savings in future years. State and local costs would also be significantly reduced. We urge that the Congress give the bill its prompt and favorable consideration.

We are advised by the Office of Management and Budget that enactment of this draft bill would be in accord with the program of the President.

Sincerely,

/s/ Dick Schweiker

Secretary

Enclosures

SECTION BY SECTION SUMMARY
SOCIAL WELFARE AMENDMENTS OF 1981

TITLE I -- AMENDMENTS TO THE PROGRAM OF AID TO FAMILIES WITH DEPENDENT CHILDREN

* * * *

Treatment of Income in Excess of the Standard of Need

Section 104 of the draft bill adds a new play requirement specifying the manner in which States must treat significant amounts of income received in a single month. Under current law, there is no way to assure that large payments, such as lump-sum payments of insurance proceeds, or retroactive benefit payments, are considered available to meet current needs over a period of time, even though the family eligibility can be curtailed for the month of receipt. The proposal would specify that these large payments, together with other income remaining after application of the disregards, would be considered as income in the month of receipt and that the family would be ineligible for the number of months obtained by dividing all that month's countable income by the applicable standard. That number (i.e., the number of "standards" met by the income) will define the number of months for which the family will be ineligible for aid. If any amount (a part of the standard) is remaining, that will be counted as income in the first month following the period of ineligibility.

* * * *